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IN THE

Supreme Court of the United States

October Term, 1922

[No. 1.]

TAKAO OZAWA,

Appellant,

against

THE UNITED STATES,

Appellee.

[No. 177.]

TAKUJI YAMASHITA and CHARLES HIO KONO,

Petitioners,

against

J. GRANT HINKLE, as Secretary of State of the State
of Washington,

Respondent.

On Writ of Certiorari to the Supreme Court of the
State of Washington

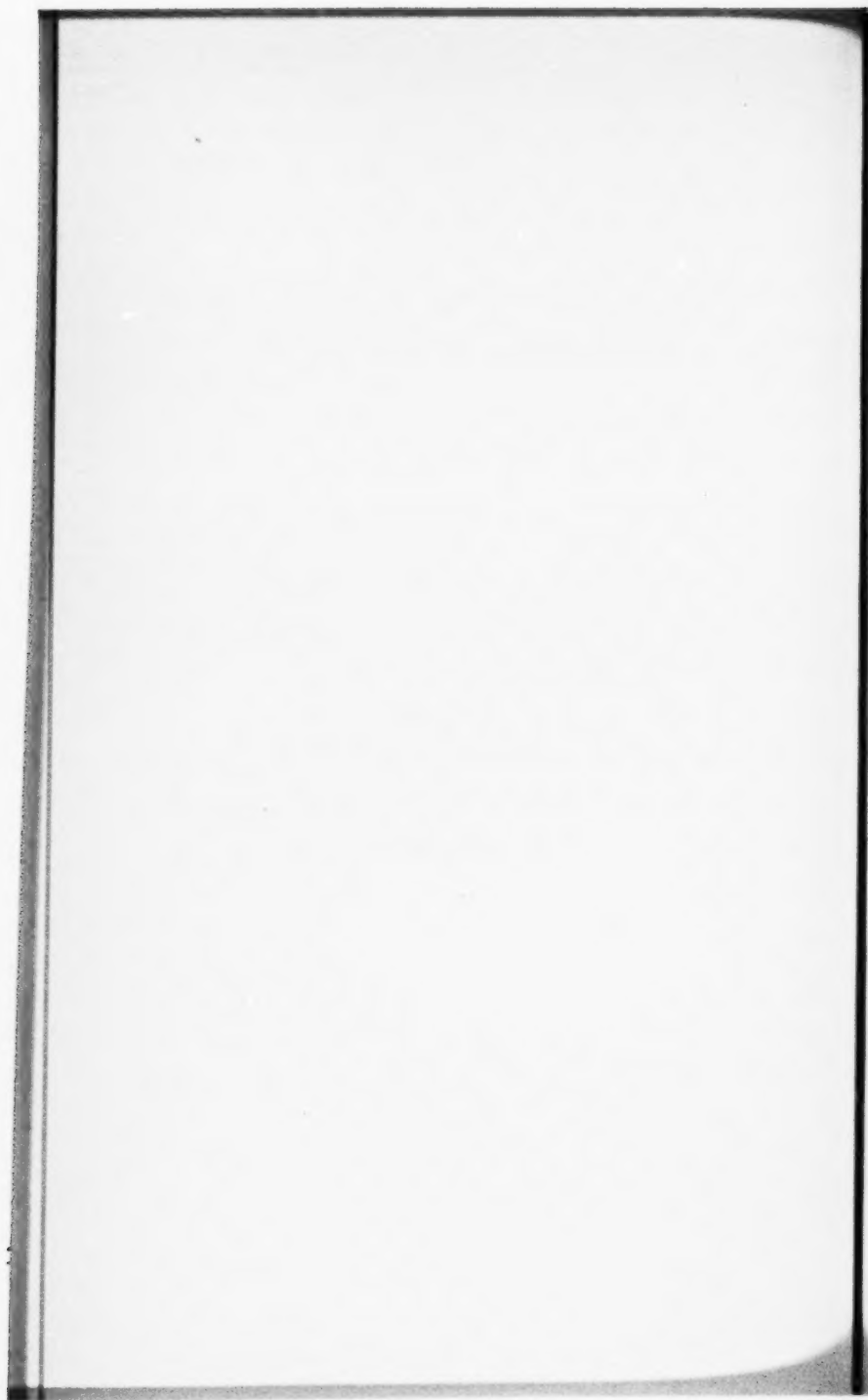
REPLY BRIEF FOR PETITIONERS

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**REPLY BRIEF FOR APPELLANT AND
PETITIONERS.**

The United States has filed a brief in the *Ozawa* case which it also asks leave to file in the *Yamashita* case as *amicus curiae*. The respondent in the *Yamashita* case, the Secretary of State of the State of Washington, has filed a brief in that case. We beg to submit a few words in reply to both briefs.

The contention of the respondents in both cases is in effect, that under the naturalization laws of the United States, only the following classes of persons may be naturalized:

Aliens of African nativity—including every race which inhabits that continent, from the Moors and Egyptians in the north, through the various gradations of

blacks, in the Soudan, Senegal, Liberia and other equatorial countries, to the Portuguese, Dutch and British in the south, and persons of African descent, no matter from which of those races or tribes they may come—white, black, brown or yellow in color;

All European races, from the blue-eyed and yellow-haired, ruddy complexioned Scandinavians, to the dark, swarthy, brown, Portuguese, Southern Italian, and perhaps the European Turk. Also Armenians, Syrians, Hindoos, Parsees, Filipinos, Porto Ricans, Half-breed Filipinos, Mexicans.

But that the cultivated Japanese, whose artistic and literary development and high civilization extends back for centuries, and who have shown themselves to be the equals in intellectual power and culture of any race in the world, are excluded from the right of naturalization, no matter what may be their personal fitness, intellectually and morally, for participation in our citizenship. The question for the Court is whether or not this construction is required by the laws of the land.

In the *Ozawa* case, the District Court of Hawaii, to which the Appellant applied for naturalization, found that, aside from the question of race, he has all the other qualifications for citizenship.

“Twenty years continuous residence in the United States, including over nine years’ residence in Hawaii, graduation from the Berkeley (California) High School, nearly three years’ attendance at the University of California, the education of his children in American schools and churches, the maintenance of the English language in his home, are some of the facts in his behalf. And he has presented two briefs of his own authorship, in themselves ample proof of his qualifications of education and character.”

Both the petitioners in the *Yamashita* case were admitted to citizenship by the Superior Court of Pierce County, Washington, in May, 1902. No steps ever have

been taken to revoke the certificates of naturalization issued to them. Yet the Supreme Court of Washington has refused them admission to the bar of that State (*In re Yamashita*, 30 Wash. 234), and the Secretary of State of the State of Washington has refused to receive and file a certificate of incorporation prepared and executed by them in conformity with the general corporation laws of that State, upon the ground that their naturalization must be considered void because they are of Japanese birth.

The *Yamashita* case must be governed by U. S. Revised Statutes, "Title XXX, Naturalization," being the statute in force in 1902, when certificates of naturalization were issued to the petitioners.

The *Ozawa* case, coming up, as it does, on certificate from the Circuit Court of Appeals of the Ninth Circuit, asking instructions, depends upon the statute now in force, being the Act of June 29, 1906, as amended by the Act of May 11, 1918 (40 Stats., p. 548). Great stress is laid by the respondents in both cases upon the fact that in eight cases, the lower federal courts, and in one case, a state court, have held Japanese not to be qualified for citizenship, and in two cases the lower federal courts have held Koreans likewise disqualified; but no reference is made to the fact that in a large number of cases, impossible to ascertain without a more comprehensive inquiry than would be open to petitioners, the courts have granted certificates of naturalization to Japanese persons. Judge LOWELL in *In re Halladjian*, 174 Fed., 834, 843, says:

"While an exhaustive search of the voluminous records of this court, sitting as a court of naturalization, has been impossible, yet some early instances have been found where not only western Asiatics, but even Chinese, were admitted to naturalization. After the majority of Americans had come to believe that great differences separated the Chinese, and later the Japanese, from other immigrants, these persons were no longer classi-

fied as white; but while the scope of its inclusion has thus been somewhat reduced, 'white' is still the catch-all word which includes all persons not otherwise classified."

Until the period referred to by Judge LOWELL, when the majority of Americans had come to believe that great differences separate the Japanese from other immigrants—which was when the clamorous opposition to their superior industrial efficiency arose in California, within the last few years—Japanese were naturalized by many courts. So that the fact that in the small number of cases cited in the briefs of the respondents, naturalization was refused them, can have but little weight, unless the reasoning by which the courts reached their conclusions in those cases has persuasive or controlling influence with this court.

We have pointed out in our main brief the varying and conflicting reasoning of the different judges in the cases referred to, and we submit that no satisfactory rule of construction can be deduced from the opinions cited.

The main proposition upon which the respondents rest is that Title XXX of the Revised Statutes, entitled Naturalization, enacted that

"the provisions of this title shall apply to aliens, being free white persons and to aliens of African nativity and to persons of African descent."

That in the *Yamashita* case, petitioners' right was limited by this provision, and that being Japanese, they are not free white persons, and, therefore, not within the provisions of that title. The contention in the *Ozawa* case is, that although Congress in 1906 enacted a comprehensive statute, entitled

"An act to establish a bureau of immigration and naturalization and to provide for an uniform rule for the naturalization of aliens throughout the United States" (34 Stats., 596)

which act contains no such provision as that embodied in Section 2169 R. S., yet, inasmuch as Congress did not specifically repeal that section, it must be presumed that it meant to carry over its provisions into the Act of 1906, although it did not say so, and that the right of naturalization under the Act of 1906 is still restricted by Section 2169 R. S. to Africans and white persons.

In the brief of the United States, it is contended that the Act of 1906 is not complete in itself, but is limited in its application to the eligible classes of persons mentioned in Section 2169 R. S. In answer to this it may be pointed out that the act purports to be complete in itself. Its title declares it to be

"An act * * * to provide for an uniform rule for the naturalization of aliens throughout the United States."

All the naturalization laws previously enacted, from 1790 down, have been similarly entitled, being enacted pursuant to the constitutional grant to Congress of power

"to establish an uniform rule of naturalization * * * throughout the United States" (Art. I, Sec. 8).

Speaking of this act, MORRIS, *J.*, in the Dist. Court, Mass., in deciding that Section 30 of the act authorizing the naturalization under certain circumstances of Filipinos was not restricted by R. S., Section 2169, said: "The act of which Section 30 forms a part was obviously intended to cover fully the subject of naturalization."

The argument that Section 2169 is to be imported into the Act of 1906, is supported by reference to certain colloquies between members of one House or the other of Congress during the discussion of the bill. Its legislative history is quoted at great length in the brief of the respondent in the *Yamashita* case. With respect to

this, it may be said, as the Court did in *Duplex Printing Press Co. v. Deering, et al.*, 254 U. S., 443, 474, that

“By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body.”

To bring the case within the exceptions to that rule, reference is made to the fact that in the statement made by Representative Bonyng of the Naturalization Committee of the House of Representatives, he said that the bill presented did not change the fundamental law in reference to naturalization, except in two particulars: one, that before an alien can be naturalized, he must be able to write in his own or the English language, and able to read, speak and understand English, and two, he shall in his petition for naturalization declare that it is his intention to reside permanently in the United States. The rest of the bill, he said, in effect was either administrative or provided a code of procedure (40 Cong. Rec., pp. 3640-3643).

But, after all, the meaning of a statute, like that of a will, must be determined from the language employed.

Declarations of intention, which are entirely at variance with the structure of the bill, cannot change the effect of the legislation. The act purports to be complete in itself. It repealed certain specific sections of the Revised Statutes, leaving unrepealed Sections 2166, 2169, 2170, 2171, 2172 and 2174. Section 2170 provides:

“No alien shall be admitted to become a citizen who has not for a continued term of five years next preceding his admission resided within the United States.”

Substantially the same provision is included in Section 4 of the Act of 1906, paragraph fourth, which provides:

"It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least and within the state or territory where such court is at the time held one year at least * * *."

Certainly this provision covers applications under the Act of 1906, without any reference to the Revised Statutes, but it left in the Revised Statutes, Section 2169, to be applicable to all of the cases within the unrepealed sections of that title. The construction put upon Section 30 already has been referred to.

See also

Re Bantista, 245 Fed., 765;

Re Giralde, 226 Fed., 826.

The fact that the forms set forth in the Act of 1906, include distinctive marks of personal description, such as "color, complexion, height, weight, color of hair, color of eyes, and other visible distinctive marks," does not import into that act the requirement that the applicant shall be white or African. These requirements evidently are for the purpose of identification.

Great stress also is laid by the respondent in the *Yamashita* case, upon the legislation of 1918, amending Section 4 of the Act of 1906 by adding a number of subdivisions. The paragraph at the end of Section 2 of the Act of 1918 (40 Stats., p. 547), provides that

"* * * Nothing in this act shall repeal or in any way enlarge Section twenty-one sixty-nine of the Revised Statutes except as specified in the seventh subdivision of this act and under the limitation therein defined * * *."

This, it is argued, is a legislative recognition of the fact that Section 2169 remains unrepealed. But the petitioners have not contended that Section 2169 was repealed. Their contention is, that it remains, as it always was, applicable to Title XXX of the Revised Statutes, and has not been made applicable by any act of Congress to the Act of 1906. A somewhat amusing colloquy in the House of Representatives when this bill was under consideration throws a light upon the loose methods of legislation which result in the obscurities which courts are expected to remove. On May 3, 1918, the report of the Conference Committee was discussed in the House. Mr. Moore asked:

“How would that apply in the case of a Chinaman or a Japanese? The term ‘any alien’ is pretty broad. It applies to a Filipino in the service. (He was referring at that time to the provisions of the new Subdivision 7.) Is it possible it would apply also to a Chinaman or a Jap?”

To which Mr. Burnett replied:

“This does not repeal the existing law which excludes Chinese and Japanese from citizenship.”

“The law reads:

“‘That hereafter no state court or court of the United States shall admit Chinese to citizenship and all laws in conflict with this act are hereby repealed.’”

[This law is the Act of May 6, 1882, Section 14 (22 Stats. 58).]

In other words, it is quite obvious that at that time, Mr. Burnett, and possibly the Committee, had only considered the effect of the Chinese exclusion acts.

Later on, Mr. Moore again returned to the question, and Mr. Burnett then read the provision in the bill reading:

“Nothing in this act shall repeal or in any way enlarge Section twenty-one sixty-nine of the Re-

vised Statutes except as specified in the seventh subdivision of this act and under the limitations therein defined;"

and stated that *an Asiatic was not entitled to naturalization* (56 Cong. Rec., pp. 6000-6001). [Apparently he had not had his attention called to the decisions cited in our principal brief holding qualified for naturalization Parsees, Armenians, Syrians and Hindoos (see pp. 6-16.)] Mr. Norton asked how the naturalization of Chinese or Japanese in the service was guarded against by reference to Section 2169 (p. 6003), to which Mr. Burnett replied:

"Section 2169 is a declaration as to who shall be entitled to naturalization—that is white persons and aliens of African nativity and persons of African descent; and in not repealing that, and specifically stating that it does not repeal that, it constitutes a limitation upon the scope of this law so far as the naturalization of Chinese and Japanese is concerned."

He stated that that had been the construction of the courts; that the courts had said that that language excludes brown persons (pp. 6003, 6004).

In speaking as to the scope of the bill, Mr. Sabath, a member of the committee which framed it, stated that the bill

"applies to all aliens who are now serving in the United States Army, Navy, or Marine Corps, it matters not what nationality they are." (p. 6024.)

Notwithstanding this construction placed upon the act by the Committee, Judge LEARNED HAND, in the District Court of the Southern District of New York in the case of *In re Lampitoe*, 232 Fed., 382, refused naturalization to the son of a Spanish father and a Filipino mother who was born in Manila and served in the United States Navy. Similar decisions also have been rendered *In re Alverto*, 198 Fed., 688 (THOMPSON, J., E. D. Pa.);

In re Kumagai, 163 Fed., 922 (HANFORD, J., W. D. Wash.).

Finding that Section 2169, R. S., has not been repealed, is a very different thing from a decision that, although by its own express language it applies only to "this title," i. e., Title XXX of the Revised Statutes, in which it is found, by judicial construction it shall be made applicable to something else, namely, to the provisions of the new statute enacting a

"uniform rule for the naturalization of aliens throughout the United States,"

in which it does not appear. Respondent in the *Yamashita* case, claims that the word "title" was simply used in the original revision for the purpose of convenience, and that as used in the revision of 1873, it referred to all existing laws with respect to naturalization. We are utterly unable to understand the basis for any such contention. The Revised Statutes are divided into a number of titles and chapters. Title XXX contains but one chapter headed "Naturalization." That title is divided into ten sections, 2165 to 2174, both inclusive. There is not a line in it that suggests that the title refers to anything but the sections embraced in it.

Finally, counsel seek to buttress their argument by referring to a draft compilation of laws prepared by a committee of the House of Representatives and passed by the House May 16, 1921, which groups all existing laws relating to immigration and naturalization under a single chapter and includes 2169 as a part of that chapter. It will be observed that this compilation has not yet been passed by the Senate, and can have no other weight than that which may be derived from the fact that the draftsmen of that section and the House chose to prepare such a formulation for the Senate's consideration. It can have no effect whatever upon the construction of existing law.

The opinion of the Attorney General, cited at page 27 of his brief, by respondent in the *Yamashita* case (27

Opinions, 507), involved the question whether or not the words "who might herself be lawfully naturalized," in the Act of 1895 and R. S., 1994, referred to a class or race who might be lawfully naturalized, or whether the provisions of the Immigration Law to character, etc., also were applicable. The woman whose case was there under consideration was a Belgian, who had been arrested charged with being an alien prostitute, who, between the date of her arrest and the date of the habeas corpus proceedings, had married a citizen of the United States. It was merely assumed in the opinion that under the existing naturalization law any free white person was entitled to naturalization, and the question examined and answered was whether or not an alien woman could acquire citizenship through marriage to a citizen, unless she complied with all the conditions of the immigration laws. The only point in the opinion was that the statute referred to did not import compliance with anything but the naturalization laws.

Considering the question under the Revised Statutes as applicable to Yamashita, and, for the sake of argument, assuming that the same section, 2169, applies to Ozawa, the final question remains, what is "a free white person" within the meaning of that statute. Interpreted literally, the naturalization court must in every instance inspect the applicant and determine what his color is. If we get away from this, the literal construction, we are on an uncharted sea, the vagaries of which are evidenced by the conflicting decisions cited in the briefs.

Respondents in both cases glide softly over the fact that when Congress determined to exclude the Chinese, it was not content to rest upon any such interpretation of Section 2169 as that contended for by respondents, but legislated specifically against the naturalization of any Chinese person by a series of statutes, from 1882 to 1904, enumerated on page 19 of petitioner's supplemental brief in the *Ozawa* case.

In *Low Wah Suey v. Backus*, 225 U. S., 460, 473, the question was whether a Chinese woman, not born in this

country, could become a naturalized citizen under the laws of the United States, and, therefore, could acquire citizenship by marriage. The Court referred to the Act of May 6, 1882 (22 Stats. 58, 61), as establishing the fact that she could not become such citizen. The treaty with China of December 8, 1894, also, while securing to Chinese temporarily or permanently residing in the United States the protection of their persons and property and all rights that are given by the laws of the United States to the citizens of the most favored nation, specifically excepted therefrom "*the right to become naturalized citizens.*" It certainly is not without significance that the Treaty with Japan of March 21, 1895, provided that

"the citizens or subjects of each of the two high contracting parties shall have full liberty to enter, travel or reside in any part of the territories of the other contracting party and shall enjoy full and perfect protection for their persons and property,"

and that no exception of the right to become a naturalized citizen is contained therein.

It is earnestly submitted, that giving the fullest force and effect to R. S. Section 2169, the only logical construction is to hold with Judge LOWELL that the word "white" has generally been used in the Federal and in the State courts, in the publications of the United States and in its classification of its inhabitants, to include all persons not otherwise classified; and that, as Judge MAXEY suggested in *In re Rodriguez* (81 Fed. 337), the words were used in the original Act of 1790, for the sole purpose of withholding the right of citizenship from the black or African race and the Indians then inhabiting this country, and that if Congress desires to give a more restricted meaning to the phrase, it must do what hitherto it has refrained from doing, that is, clearly express the intention that they shall be so limited.

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